

Proposed Administrative Consent Agreement Background Summary

Subject: TruGreen ChemLawn
PO Box 1479
Westbrook, Maine 04092

Date of Incident(s): 5/12/07, 6/21/07, and 7/17/07

Background Narrative: Leora Rabin, a Yarmouth resident, called our office on September 10, 2007. She stated that on a number of occasions in 2007, TruGreen Chemlawn applied pesticides at 34 Glen Road. This address is located less than 250 feet from Rabin and her husband, David Inger's residence at 59 Glen Road. Inger and the 59 Glen Road address are listed on the 2007 Maine Pesticide Notification Registry. Rabin stated no one from TruGreen notified them prior to making the pesticide applications. A Board inspector confirmed that pesticide applications were made without notification. On the list of neighbor's names and corresponding addresses that were within 250 feet that Inger submitted to the Board, he misspelled TruGreen's customer name at 34 Glen Road as Simonell rather than Cimino. The cover letter that the Board sends with the Pesticide Notification Registry prior to each spray season tells applicators to pay attention to addresses listed rather than property owner names. The address Inger listed for TruGreen's customer at 34 Glen Road was correct.

Summary of Violation(s): CMR 01-026, Chapter 28, Section 2 (D), Commercial applicators shall notify an individual listed on the registry when performing an outdoor, non-agricultural pesticide application within 250 feet ...

Rationale for Settlement: The staff considered the compliance history of the company and compared the violation to similar cases settled by the Board in formulating a penalty proposal.

Attachments: Proposed Consent Agreement

**STATE OF MAINE
DEPARTMENT OF AGRICULTURE, FOOD AND RURAL RESOURCES
BOARD OF PESTICIDES CONTROL**

In the Matter of:)	ADMINISTRATIVE CONSENT AGREEMENT
TruGreen Chemlawn)	AND
PO Box 1479)	FINDINGS OF FACT
Westbrook, ME 04092)	

This Agreement by and between TruGreen Chemlawn (hereinafter called the "Company") and the State of Maine Board of Pesticides Control (hereinafter called the "Board") is entered into pursuant to 22 M.R.S.A. §1471-M (2)(D) and in accordance with the Enforcement Protocol adopted by the Board on September 19, 1984.

The parties to this Agreement agree as follows:

1. That the Company is a licensed spray contracting firm holding license number SCF15084 issued by the Board pursuant to 22 M.R.S.A § 1471-D (1)(B).
2. That on September 10, 2007, Leora Rabin, who resides at 59 Glenn Road in Yarmouth with David Inger, called the Board to state the Company was making pesticide applications without providing her notification pursuant to CMR 01-026 Chapter 28, Section 2.
3. That the property at 59 Glenn Road in Yarmouth is listed on the 2007 Pesticide Notification Registry under the name David Inger.
4. That on September 24, 2007, a Board inspector conducted a follow-up inspection with the Company in regards to this matter.
5. That from the inspection in paragraph four, it was determined that the Company's customer, Mr.Cimino, resides at 34 Glenn Road in Yarmouth.
6. That the 34 Glenn Road address is located within 250 feet of the 59 Glenn Road property and is listed on the 2007 Pesticide Notification Registry as an abutter to David Inger and therefore requires notification prior to pesticide applications pursuant to CMR 01-026 Chapter 28, Section 2(D).
7. That although the 2007 Pesticide Notification Registry lists the property owner at 34 Glenn Road as Simonell, the cover letter sent out to the Company with the 2007 Pesticide Notification Registry on February 16, 2007, specifically places applicators on notice that they should pay attention to the address of abutting properties rather than the owners' names.
8. That a review of Company application records during the inspection described in paragraph four showed that the Company made a number of pesticide applications to the Cimino property in 2007.

9. That the Company acknowledged, during the inspection described in paragraph four, that it failed to notify the residents at 59 Glenn Road, as required by CMR 01-026, Chapter 28, Section 2(D), prior to making the pesticide applications described in paragraph eight.
10. That the circumstances described in paragraphs one through nine constitute a violation of CMR 01-026, Chapter 28, Section 2(D).
11. That the violation described in paragraph nine constitutes a subsequent violation within a four-year period for the purposes of 7 M.R.S.A. § 616-A (2)(B), the Company having committed previous violations of pesticide control laws on two separate occasions in May of 2005 and again in July of 2005.
12. That the Board has regulatory authority over the activities described herein.
13. That the Company expressly waives:
 - a. Notice of or opportunity for hearing;
 - b. Any and all further procedural steps before the Board; and
 - c. The making of any further findings of fact before the Board.
 - d. That this Agreement shall not become effective unless and until the Board accepts it.
14. That in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violation referred to in paragraph ten, the Company agrees to pay to the State of Maine the sum of \$2,000. (Please make checks payable to Treasurer, State of Maine.)

IN WITNESS WHEREOF, the parties have executed this Agreement of two pages.

TRUGREEN CHEMLAWN

By: _____ Date: _____

Type or Print Name: _____

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____

Henry S. Jennings, Director

APPROVED:

By: _____ Date: _____

Mark Randlett, Assistant Attorney General